PRE-APPEAL BRIEF REQUEST FOR REVIEW (filed with the Notice of Appeal)	Docket Number 042253/205410
Application Number 09/693,481	Filed October 20, 2000
First Named Inventor Joel E. Short	
Art Unit 2155	Examiner Wang, Liang Che A.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

Respectfully submitted,

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Attachment
Reasons for Requesting Pre-Appeal Brief Request For Review

Independent claims 28 and 33 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ayres (U.S. Patent No. 6,738,371) in view of Sherman (U.S. Patent No. 5,978,387). Independent claim 1 and dependent claim 35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ayres in view of Sherman and further in view of Jones et al. (U.S. Patent No. 6,307,836, hereinafter "Jones"). Dependent claims 3, 6, 8-13, 29-32, 34 and 35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ayres as modified by Sherman, in view of various combinations including Jones, Gulliford et al. (U.S. Patent No. 6,618,355, hereinafter "Gulliford") (claim 3), Salkewicz (U.S. Patent No. 6,609,153) (claim 6), Fowler (U.S. Patent No. 5,793,978) (claims 8-13, 29-32 and 34), and Barton (U.S. Patent No. 6,310,886) (claim 12).

Applicants respectfully submit that the cited references, taken either individually or in combination, fail to teach or suggest at least the features discussed below of each corresponding independent claim of the present application.

Independent claim 1

Independent claim 1 stands rejected over the combination of Ayres, Sherman and Jones. Independent claim 1 recites, *inter alia*, retrieving from memory a subscriber profile that includes a first subscriber-selected bandwidth for information being sent to a network and separately retrieving a second subscriber-selected bandwidth for information being retrieved from a network, the first and second subscriber-selected bandwidths being separate. In other words, separate bandwidths are selectable for information sent to the network and received from the network. For example, a subscriber may select the bandwidth to be 100 kilobytes per second (kbps) for information received from the network and the bandwidth may be 50 kbps for information sent to the network.

Sherman is directed to the dynamic provisioning of digital data services. The Office Action admits, and Applicants agree, that Sherman fails to teach or suggest retrieving from memory a subscriber profile that includes a first subscriber-selected bandwidth for information being sent to a network and a second subscriber-selected bandwidth for information being

retrieved from a network, the first and second subscriber-selected bandwidths being separate as claimed in independent claim 1.

Ayres is directed to a router (20) including a flow manager (54) which is configured to dynamically adjust a rate of data packet flow during a network session. The Office Action admits, and Applicants agree, that Ayres fails to teach or suggest retrieving from memory a subscriber profile that includes a first subscriber-selected bandwidth for information being sent to a network and a second subscriber-selected bandwidth for information being retrieved from a network, the first and second subscriber-selected bandwidths being separate as claimed in independent claim 1. To cure the admitted deficiencies of Ayres and Sherman, the Office Action cites the combination of Jones and Ayres as disclosing the above recited feature. In this regard, the Response to Arguments section of the Office Action alleges first that "Ayres teaches a subscriber profile with subscriber selected bandwidth" and second that "Jones suggests there are two subscriber-selected bandwidths, and the two subscriber-selected bandwidth being separate (Col 4 lines 46-53)." However, Applicants respectfully submit that the second statement above is incorrect. The cited passage of Jones (col. 4, lines 46-53) lacks any disclosure at all regarding two subscriber-selected bandwidths. Instead, the cited passage merely describes that users select via a subscriber interface device, a variable number of upstream and downstream bearer channels from the network. There is no mention of the bandwidths of these channels, much less that the bandwidths of these channels may be separate and subscriber-selected.

Notably, the Office Action also states that "Jones teaches a subscriber service profile, which includes list of what services can be granted, and the desired upstream and downstream bandwidth selected by the subscriber (Col 9 lines 47-56, Col 4 lines 46-53)." Applicants respectfully submit that the above quoted statement is a mischaracterization of the teachings of Jones and that, contrary to the assertion of the Office Action, Jones fails to teach or suggest the above recited feature of independent claim 1.

Jones is directed to providing high speed access to multiple services. Applicants respectfully note that the cited passages of Jones refer separately to a user selection of the number of upstream and downstream data channels (col. 4, lines 46-53), as described above, and the provision of transport bandwidth to the user in accordance with the subscriber's profile (col. 9, lines 47-56). Nowhere in Jones is there provided any suggestion to combine these two separate concepts such that the subscriber profile would include separate upstream and

downstream bandwidths as recited in independent claim 1. Furthermore, the combination of the two passages would result instead merely in a user selected number of channels in the upstream and downstream directions in which each of the channels has the same bandwidth identified in the subscriber's profile. There is no disclosure in Jones regarding separate bandwidths for the upstream and downstream data channels. Moreover, the combination of the disclosure of Ayres does not cure this deficiency since, even if the Examiner's assertions are taken to be true, Ayres only discloses at best "a subscriber profile with subscriber selected bandwidth" and also fails to teach or suggest that separate subscriber-selected bandwidths may be retrieved for information sent to and retrieved from a network. Accordingly, individually or in combination, Ayres and Jones fail to teach or suggest retrieving from memory a subscriber profile that includes a first subscriber-selected bandwidth for information being sent to a network and a second subscriber-selected bandwidth for information being retrieved from a network, the first and second subscriber-selected bandwidths being separate as claimed in independent claim 1.

Since the cited references each fail to teach or suggest the recited feature of independent claim 1, any combination of the cited references likewise fails to teach or suggest the recited feature as claimed in independent claim 1. Thus, independent claim 1 is patentable over the cited references.

Independent claim 28

Independent claim 28 stands rejected over the combination of Ayres and Sherman. Independent claim 28 recites, *inter alia*, determining if the transfer rate for data packet transmission should be adjusted **based on a priority of the data packet**. In other words, a determination is made for each data packet as to whether the data packet transmission rate should be adjusted based on a priority of the data packet itself as described, for example, at page 15, line 30 to page 16, line 7 of the application as filed.

The Office Action cites Ayres as disclosing the above recited feature at col. 1, line 67 to col. 2, line 4. However, the cited passage of Ayres only refers to the fact that a customer account may be allocated a respective level of service priority. As such, a level of service priority according to Ayres is not related to a priority of the data packet, but is instead a fixed value for every packet received by the corresponding customer. Moreover, according to Ayres one would inspect the customer account to determine priority and not a data packet. Notably, Ayres also

refers to priority and bandwidth as separate requirements (col. 2, lines 53-56) and further elaborates that the priority referred to relates to process/task prioritization (col. 2, lines 61-63). Thus, Ayres fails to teach or suggest any adjustment of a transfer rate based on priority as recited in independent claim 28. Rather, at best, Ayres relates to an adjustment of process or task ordering based on priority. Accordingly, there is no indication from the cited passage, or indeed any part of Ayres, to teach or suggest determining if the transfer rate for data packet transmission should be adjusted **based on a priority of the data packet** as recited in independent claim 28.

Sherman similarly fails to teach or suggest determining if the transfer rate for data packet transmission should be adjusted **based on a priority of the data packet** as recited in independent claim 28 and is not cited as such.

Since the cited references each fail to teach or suggest the recited feature of independent claim 28, any combination of the cited references likewise fails to teach or suggest the recited feature as claimed in independent claim 28. Thus, independent claim 28 is patentable over the cited references.

Independent claim 33

Independent claim 33 stands rejected over the combination of Ayres and Sherman. Independent claim 33 recites, *inter alia*, performing a packet translation function to enable the subscriber to access any network without re-configuration of a host device of the subscriber. As described, for example, at page 9, lines 18-23, the packet translation function properly formats incoming packets for the user/subscriber's host at the gateway device. Accordingly, in addition to conventional routing services, the gateway device according to the claimed invention further performs the packet translation function in order to properly format incoming packets for the host device.

The Office Action cites Ayres as disclosing such feature at col. 4, line 67 to col. 5, line 10. However, the cited passage of Ayres simply describes conventional packet routing. In this regard, Ayres describes the forwarding of packets based on routing information. There is no disclosure in the cited passage, or indeed in any part of Ayres regarding performing a packet translation function. Furthermore, there is no disclosure in the cited passage to suggest that "data packet are transferred among Internet and users without the need of configuration of router" as alleged in the Office Action. Thus, Ayres fails to teach or suggest performing a packet

translation function to enable the subscriber to access any network without re-configuration of a host device of the subscriber as recited in independent claim 33.

Sherman similarly fails to teach or suggest performing a packet translation function to enable the subscriber to access any network without re-configuration of a host device of the subscriber as recited in independent claim 33 and is not cited as such.

Since the cited references each fail to teach or suggest the recited feature of independent claim 33, any combination of the cited references likewise fails to teach or suggest the recited feature as claimed in independent claim 33. Thus, independent claim 33 is patentable over the cited references.

Dependent claims 3, 6, 8-13, 29-32, 34 and 35

The additional secondary references, Gulliford, Salkewicz, Fowler and Barton also fail to teach or suggest the above recited features of independent claims 1, 28 and 33 and are not cited as such. Accordingly, the above recited features are neither taught nor suggested in any of the cited references.

Since the cited references each fail to teach or suggest the recited feature of independent claims 1, 28 and 33, any combination of the cited references likewise fails to teach or suggest the recited feature as claimed in independent claims 1, 28 and 33. Thus, independent claims 1, 28 and 33 are patentable over the cited references. Claims 3, 6, 8-13, 29-32, 34 and 35 depend either directly or indirectly from corresponding ones of independent claims 1, 28 and 33, and thus include all the recitations of their corresponding independent claims. Therefore, dependent claims 3, 6, 8-13, 29-32, 34 and 35 are patentable for at least those reasons given above for independent claims 1, 28 and 33.

Accordingly, for all the reasons stated above, Applicants respectfully submit that the rejections of claims 1, 3, 6, 8-13 and 28-35 should be reversed.